

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Samuel Der-Yeghiayan	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	10 C 5163	DATE	9/30/2011
CASE TITLE	Calvin L. Merritte ®-53322) vs. Thomas Templeton, et al.		

## DOCKET ENTRY TEXT

As stated below, this Court will consider Plaintiff's October 26, 2010, filing to be a Rule 59(e) Motion. the court will give Plaintiff one final opportunity to either pay the filing fee or file an accurately and properly completed *in forma pauperis* application form with a certified copy of his prison trust fund account statement. Plaintiff is given until October 24, 2011 to either pay the filing fee or file an accurately and properly completed *in forma pauperis* application form with a certified copy of his prison trust fund account statement. If Plaintiff pays the filing fee by October 24, 2011, the court will reinstate this action. If Plaintiff files an accurately and properly completed *in forma pauperis* application form with a certified copy of his prison trust fund account statement by October 24, 2011, the court will adjudicate such an application.

■ [ For further details see text below.]

Docketing to mail notices.

## STATEMENT

This matter is before the court on Plaintiff Calvin L. Merritte's (Merritte) *pro se* filing entitled "Relief From a Judgement or Order." (Mot. 1). On August 25, 2010, this court denied Merritte's motion for leave to proceed *in forma pauperis*. The court gave Merritte until September 29, 2010, to either pay the filing fee or file an accurately and properly completed *in forma pauperis* application form with a certified copy of his prison trust fund account statement. The court also warned Merritte that failure to either pay the filing fee or file an accurately and properly completed *in forma pauperis* application form with a certified copy of his prison trust fund account statement by September 29, 2010, would result in the dismissal of the instant action. Merritte did not pay the filing fee or file an accurately and properly completed *in forma pauperis* application form with a certified copy of his prison trust fund account statement by September 29, 2010, and on October 12, 2010, this court dismissed this action.

Merritte subsequently sent various filings to the Clerk of Court and on October 26, 2010, the instant document was stamped as filed and was placed on the docket on October 28, 2010. Merritte did not notice up the filing or otherwise bring the filing to the attention of this court. On November 1, 2010, Merritte filed

## STATEMENT

an appeal in this action.

On September 19, 2011, the Seventh Circuit ordered Merritte to file a memorandum explaining why his appeal should not be stayed as premature, pending the resolution of the October 26, 2010 filing which the Seventh Circuit indicated could be interpreted as a motion for reconsideration brought pursuant to Federal Rule of Civil Procedure 59(e) (Rule 59(e)). The Seventh Circuit also ordered that a copy of the order be forwarded to this court.

The court will consider Merritte's October 26, 2010, filing to be a Rule 59(e) Motion. Merritte indicates in his motion that he did not receive the court's August 25, 2010 order and its deadlines in a timely fashion because the order was sent to Centralia Correctional Center while he was on a court writ at Stateville Correctional Center. Although Merritte has failed to provide any documentation or evidence to support his excuse for failing to comply with this court's deadlines, the court will give Merritte one final opportunity to either pay the filing fee or file an accurately and properly completed *in forma pauperis* application form with a certified copy of his prison trust fund account statement. Merritte is given until October 24, 2011 to either pay the filing fee or file an accurately and properly completed *in forma pauperis* application form with a certified copy of his prison trust fund account statement. If Merritte pays the filing fee by October 24, 2011, the court will reinstate this action. If Merritte files an accurately and properly completed *in forma pauperis* application form with a certified copy of his prison trust fund account statement by October 24, 2011, the court will adjudicate such an application.